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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H2008 034

KEVIN ALEXANDER STERLING
10141 Samoa Avenue #1
Tujunga, California 91042

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).

2. On or about January 14, 2008, the Board received an application for a Respiratory Care Practitioner License from Kevin Alexander Sterling (Respondent). On or about January 10, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 5, 2008.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code),

1 unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3732, subdivision (b) of the Code states:

8 "The board may deny an application, or may order the issuance of a license
9 with terms and conditions, for any of the causes specified in this chapter for
10 suspension or revocation of a license, including, but not limited to, those causes
11 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

12 7. Section 3750 of the Code states:

13 "The board may order the denial, suspension or revocation of, or the
14 imposition of probationary conditions upon, a license issued under this chapter, for
15 any of the following causes:

16 “ . . .

17 “(d) Conviction of a crime that substantially relates to the qualifications,
18 functions, or duties of a respiratory care practitioner. The record of conviction or a
19 certified copy thereof shall be conclusive evidence of the conviction.

20 “ . . .

21 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
22 substantially related to the qualifications, functions, or duties of a respiratory care
23 practitioner.

24 “

25 “(m) Denial, suspension, or revocation of any license to practice by
26 another agency, state, or territory of the United States for any act or omission that
27 would constitute grounds for the denial, suspension, or revocation of a license in
28 this state.

1 “”

2 8. Section 3752 of the Code states:

3 “A plea or verdict of guilty or a conviction following a plea of nolo
4 contendere made to a charge of any offense which substantially relates to the
5 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
6 a conviction within the meaning of this article. The board shall order the license
7 suspended or revoked, or may decline to issue a license, when the time for appeal
8 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
9 order granting probation is made suspending the imposition of sentence,
10 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
11 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
12 setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment.”

14 9. Section 3752.5 of the Code states:

15 “For purposes of Division 1.5 (commencing with Section 475), and this
16 chapter [the Respiratory Care Practice Act], a crime involving bodily injury or
17 attempted bodily injury shall be considered a crime substantially related to the
18 qualifications, functions, or duties of a respiratory care practitioner.”

19 10. California Code of Regulations, Title 16, section 1399.370, states:

20 “For the purposes of denial, suspension, or revocation of a license, a crime
21 or act shall be considered to be substantially related to the qualifications, functions
22 or duties of a respiratory care practitioner, if it evidences present or potential
23 unfitness of a licensee to perform the functions authorized by his or her license or
24 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
25 acts shall include but not be limited to those involving the following:

26 “ . . .

27 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.

28 “”

1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the
4 board, the board or the administrative law judge may direct any practitioner or
5 applicant found to have committed a violation or violations of law to pay to the
6 board a sum not to exceed the costs of the investigation and prosecution of the
7 case."

8 12. Section 3753.7 of the Code states:

9 "For purposes of the Respiratory Care Practice Act, costs of prosecution
10 shall include attorney general or other prosecuting attorney fees, expert witness
11 fees, and other administrative, filing, and service fees."

12 13. Section 3753.1, subdivision (a) of the Code states:

13 "An administrative disciplinary decision imposing terms of probation may
14 include, among other things, a requirement that the licensee-probationer pay the
15 monetary costs associated with monitoring the probation."

16 FIRST CAUSE FOR DENIAL OF APPLICATION

17 (Conviction of a Crime)

18 14. Respondent's application is subject to denial under Code sections
19 3750, subdivision (d), and 3752, and California Code of Regulations, Title 16, section
20 1399.370, subdivision (b), in conjunction with Code section 3732, subdivision (b), in that
21 Respondent has been convicted of a crime substantially related to the qualifications,
22 functions and duties of a respiratory care practitioner. The circumstances are as follows:

23 March 14, 1996 Conviction

24 A. On or about November 14, 1995, a Santa Monica Police Officer
25 responded to a report of fraudulent activity at a Life Uniform store in Santa
26 Monica, California. The store sales clerk told the officer that Respondent and a
27 female suspect attempted to exchange or get credit or cash for merchandise using
28 stolen receipts from other Life Uniform stores. Respondent and the female suspect

1 had also demanded money in exchange for stolen merchandise they were
2 attempting to return without receipts at a Life Uniform store in Beverly Hills,
3 California. The police officer found fraudulent sales receipts in Respondent's
4 vehicle. Respondent was arrested for forgery and receiving stolen property.

5 B. On or about December 11, 1995, in Los Angeles County Municipal
6 Court Case No. 95M06398, Respondent was charged with receiving or concealing
7 stolen property, in violation of Penal Code section 496, subdivision (a), a
8 misdemeanor.

9 C. On or about March 14, 1996, Respondent was convicted upon his
10 plea of nolo contendere to receiving or concealing stolen property. He was placed
11 on probation for two years, and was ordered to perform 216 hours of community
12 service, and pay a restitution fine of \$100.00.

13 August 5, 1996 Conviction

14 D. On or about April 2, 1996, Los Angeles Police Officers responded
15 to a report by a security officer of a disturbance in the parking lot of the Panorama
16 City shopping mall. A female victim, who was Respondent's former girlfriend,
17 reported to the officers that Respondent had chased her through a store, grabbed
18 her, and pushed her against the wall. Respondent also shoved to the ground a male
19 victim who attempted to assist the female victim, and he punched the face of a
20 security guard, a third victim. Respondent was arrested for felony battery.

21 E. On or about April 4, 1996, in Los Angeles County Municipal Court
22 Case No. LA023754, Respondent was charged with battery with serious bodily
23 injury, in violation of Penal Code section 243, subdivision (d), a felony (Count 1),
24 and battery, in violation of Penal Code section 242, a misdemeanor (Counts 2 and
25 3).

26 F. On or about May 1, 1996, the court ordered the complaint amended
27 to change Count 1 to battery, in violation of Penal Code section 242, a
28 misdemeanor.

1 G. On or about August 5, 1996, the court ordered the complaint
2 amended to change Count 1 to battery on a person with injury, in violation of Penal
3 Code section 242-243, subdivision (d), a misdemeanor. Respondent was convicted
4 upon his plea of nolo contendere to battery on a person with injury (Count 1) and
5 battery (Count 3). Count 2 of the complaint was dismissed. He was placed on
6 probation for three years on the following terms and conditions, including: serve
7 150 days in county jail (with credit for 7 days); pay fines of \$300.00; perform 30
8 days of Cal Trans; pay restitution of \$200.00 to the victim; complete a 12-month
9 batterer's counseling program; and participate in a anger management counseling
10 program.

11 SECOND CAUSE FOR DENIAL OF APPLICATION

12 (Revocation of a License to Practice by Another Agency)

13 15. Respondent is subject to disciplinary action under section 3750,
14 subdivision (m), of the Code in that the renewal of Respondent's Certified Nurse Assistant
15 (CNA) Certificate 346645 and his Home Health Aide Certificate (HHA) 124334 was
16 denied on May 18, 2000, by the California Department of Public Health, Licensing and
17 Certification Program, Aide and Technician Certification Section (ATCS) for acts or
18 omissions that would constitute grounds for denial, suspension or revocation of a
19 respiratory care practitioner's license. On August 24, 2000, Respondent's appeal of this
20 decision was denied. The circumstances are as follows:

21 A. On or about January 23, 1993, Respondent was issued a
22 CNA certificate, and on or about November 1, 1996, he was issued an HHA
23 certificate.

24 B. On or about February 25, 1987, Respondent was convicted
25 of forging or altering a vehicle registration, in violation of Vehicle Code section
26 4463, subdivision (a),

27 C. On or about March 14, 1996, Respondent was convicted of
28 receiving or concealing stolen property, in violation of Penal Code section 496.

1 D. On or about August 5, 1996, Respondent was convicted of
2 battery with injury, in violation of Penal Code section 242-243, subdivision (d),
3 and battery, in violation of Penal Code section 243, subdivision (d).

4 E. On or about November 13, 1996, and October 30, 1998,
5 Respondent signed renewal applications stating under penalty of perjury that he
6 had not been convicted of a crime, other than a minor traffic violation.

7 F. Based on Respondent's convictions, and the false statements
8 made on his renewal applications, ATCS denied the renewal of his CNA and HHA
9 certificates.

10 THIRD CAUSE FOR DENIAL OF APPLICATION

11 (Commission of a Fraudulent, Dishonest, or Corrupt Act)

12 16. Respondent's application is subject to denial under Code section
13 3750, subdivision (j), in conjunction with section 3732, subdivision (b), in that he
14 committed fraudulent, dishonest or corrupt acts that are substantially related to the
15 qualifications, functions, or duties of a respiratory care practitioner.

16 A. Respondent had a conviction on March 14, 1996, for receiving or
17 concealing stolen property. The facts and circumstances, set forth in above
18 Paragraph 14, Subparagraphs A through C, of this Statement of Issues are
19 incorporated herein by reference.

20 B. On Respondent's respiratory care practitioner license application, he
21 did not disclose that he had been issued a Certified Nurse Assistant Certificate and
22 a Home Health Aide Certificate in the State of California as requested in question
23 number 16. Also, Respondent answered "No" to question number 21 on the
24 license application regarding whether any disciplinary action had ever been taken
25 by any agency against any professional license that he held now or in the past. On
26 or about January 10, 2008, Respondent signed the license application under penalty
27 of perjury declaring that the information on the application was true and correct.
28 He thereafter submitted the license application to the Board. As Respondent was

1 well aware at the time he signed this license application, his answers were false by
2 virtue of the facts set forth in Paragraph 15 above.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters
5 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

6 1. Denying the application of Kevin Alexander Sterling for a
7 Respiratory Care Practitioner License;

8 2. Directing Kevin Alexander Sterling to pay the Respiratory Care
9 Board the costs of the investigation and enforcement of this case, and if placed on
10 probation, the costs of probation monitoring; and

11 3. Taking such other and further action as deemed necessary and
12 proper.

13 DATED: January 21, 2009

14
15
16 Original signed by: _____
17 STEPHANIE NUNEZ
18 Executive Officer
19 Respiratory Care Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant
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